

MAR 25 2009

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
MUR 6071) CASE CLOSURE UNDER THE
KIRK FOR CONGRESS AND) ENFORCEMENT PRIORITY SYSTEM
LUKE PRAXMARER, AS TREASURER)
)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 6071 as a low-rated matter. In this case, the complainant, Walter Salganik, alleges that Kirk for Congress and Luke Praxmarer, in his official capacity as treasurer ("the Committee"), violated the disclaimer provisions of the Federal Election Campaign Act, as amended ("Act"). Specifically, the Committee allegedly failed to include a statement indicating that it paid for the costs of an electronic mail communication containing an attached flier advertising a fall voter outreach program. The complainant explains that it is "on information and belief," that the flier was distributed by email, by mail, or by both, to over 500 recipients, thus triggering the disclaimer requirements under 2 U.S.C. § 431(22) and 11 C.F.R. §§ 100.26-27 and 110.11.

In its response, the Committee asserts that the flier clearly identifies Kirk for Congress as the sponsoring entity (i.e., the entity that paid for the costs of the

1 communication), because it contains a prominent logo identifying Congressman Mark Kirk
2 and includes in large type an email address for the Committee, which states
3 "kirkforcongress.com." The Committee also asserts that, based on its brief review of the
4 email records of the campaign staff member who sent the email at issue, the flier was not sent
5 via mass distribution. Instead, the respondent claims that it appears the email was sent to a
6 limited number of individuals and the complainant failed to provide any evidence to the
7 contrary.

8 In recognition of the possibility that the email at issue could have had a limited
9 distribution pattern and, therefore, may or may not have fallen under the disclaimer
10 provisions of the Act, and in furtherance of the Commission's priorities and resources,
11 relative to other matters pending on the Enforcement docket, the Office of General Counsel
12 believes that the Commission should exercise its prosecutorial discretion and dismiss the
13 matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

14 **RECOMMENDATION**


15 The Office of General Counsel recommends that the Commission dismiss
16 MUR 6071, close the file, and approve the appropriate letters.

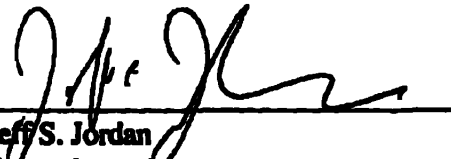
17 Thomasenia P. Duncan
18 General Counsel

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22 Date

3/24/09

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